

JUDGE ROBINSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CV 6503

MAXWELL ROBERTSON CORPORATION,
ROBERT GARSTAK,

Plaintiffs,

NOTICE OF REMOVAL

Civil Action No.: _____

-against-

TENNECO, INC., PACTIV CORPORATION,

Defendants.

X

FILED
U.S. DISTRICT COURT
2007 JUL 18 PM 4:10
S.D. OF N.Y.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK:

Defendant PACTIV CORPORATION, by and through its attorneys, Sedgwick, Detert,
Moran & Arnold, LLP, and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, hereby files this
Notice of Removal of this civil action from the Supreme Court of the State of New York,
Orange County, to the United States District Court for the Southern District of New York.
The grounds for removal are as follows:

1. On or about May 22, 2007, an action was commenced against defendants
TENNECO, INC. ("Tenneco") and PACTIV CORPORATION ("Pactiv") in the Supreme
Court of the State of New York, Orange County, by plaintiffs MAXWELL ROBERTSON
CORPORATION and ROBERT GARSTAK ("plaintiffs"). The suit is identified in the
Supreme Court of the State of New York as *Maxwell Robertson Corporation and Robert
Garstak v. Tenneco, Inc. and Pactiv Corporation*, Index No. 4607/07.

2. Pactiv was served with a copy of the Summons and Verified Complaint,
attached hereto as "Exhibit A," on or about June 18, 2007. The filing of this Notice of

Removal is therefore timely because it is made within thirty (30) days of June 18, 2007 – the date Pactiv first received notice that this action was removable on the basis of diversity jurisdiction under 28 U.S.C. §§ 1332 and 1441(a).

3. Upon information and belief, plaintiffs are now and were at the time of the filing of their Verified Complaint, citizens of the State of New York. Plaintiff Robert Garstak, resides at 65 Sunset Ridge Road, Monroe, New York, 10950. Plaintiff Maxwell Robertson Corporation is a New York corporation with its principle place of business in New York.

4. Pactiv is now and was at the time of the filing of the Verified Complaint a Delaware corporation with its principle place of business in Illinois. Thus, Pactiv should be deemed a citizen of Delaware and Illinois for the purposes of this Notice of Removal.

5. Upon information and belief, defendant Tenneco is now and was at the time of the filing of the Verified Complaint a Nevada corporation with its principle place of business in Illinois. Thus, Tenneco should be deemed a citizen of Nevada and Illinois for the purposes of this Notice of Removal.

6. None of the parties in interest properly joined and served as defendants are citizens of the State of New York.

7. Counsel for Pactiv has reviewed the docket of the state court from which this action has been removed and has determined, based on the lack of any return of service or responsive pleading documents related to Tenneco, that Tenneco has not been served. Counsel for Pactiv has also unsuccessfully attempted to contact plaintiff's counsel to confirm that he has not obtained service on Tenneco. Consequently, because Tenneco has not been served with a copy of the initial pleading in this action, their consent to

removal is not required. See, e.g., Ell v. S.E.T. Landscape Design, Inc., 34 F.Supp.2d 188 (S.D.N.Y. 1999).

8. This is a civil action and, upon information and belief, plaintiffs seek damages in excess of \$75,000.00, exclusive of interest and costs.

9. Accordingly, the above-referenced action between plaintiffs and defendants is one in which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, and may be removed to this Court by Pactiv, pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1446, in that it is a civil action between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

10. Pursuant to Rule 81.1(b), Local Rules of the United States District Court for the Southern District of New York, Pactiv will file with the Clerk of this Court, within twenty (20) days after filing this Notice of Removal, a copy of all records and proceedings in the state court from which this case is removed.

11. Pursuant to 28 U.S.C. § 1446(d), Pactiv has served a copy of this Notice upon counsel for plaintiffs and has filed a copy of this Notice with the Clerk of the Supreme Court for the State of New York, New York County.

WHEREFORE, petitioner Pactiv, a defendant in the action described herein currently pending in the Supreme Court of the State of New York, Orange County, Index No. 4607/07, prays that this action be removed therefrom to this Honorable Court.

Dated: New York, New York
July 18, 2007

Yours, etc.

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: 

Scott L. Haworth (SH 5890)
Attorneys for Defendant
PACTIV CORPORATION
125 Broad Street - 39th Floor
New York, New York 10004-2400
(212) 422-0202

TO: Christopher D. Watkins, Esq.
Sussman & Watkins
Attorneys for Plaintiffs
40 Park Place
P.O. Box 1005
Goshen, NY 12550
(845) 294-3991